UNITED STATES STEEL CORP.

IBLA 79-371 Decided February 19, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting mineral patent applications. M 5452 and M 5453.

Reversed and remanded.

1. Mining Claims: Contests--Mining Claims: Patent

> Where the Bureau of Land Management is not satisfied with the evidence of discovery submitted by a mineral patent applicant, it may request further information. However, if it concludes that the information presented is insufficient to support a discovery, it may not summarily reject the patent application. It must initiate a contest proceeding.

APPEARANCES: Christian F. Beukema, Vice President and General Manager, U.S. Steel Corporation, Pittsburgh, Pennsylvania, for appellant; Richard K. Aldrich, Esq., Office of the Solicitor, Billings, Montana, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

United States Steel Corporation has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 2, 1979, rejecting its mineral patent applications, M 5452 and M 5453. 1/ BLM based its rejection on appellant's "inability, at this

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1/ Patent application M 5452 covers the Quake Nos. 1 through 3 and 6 through 18 lode mining claims situated in secs. 8 through 10, T. 11 S., R. 1 W., Principal meridian, and patent application M 5453 covers the Sea Nos. 13 through 15, Gee Nos. 13 through 15, Ess Nos. 13 through 15, and the Low Nos. 2 through 4, 10, and 11 lode mining claims situated in secs. 32 and 33, T. 10 S., R. 1 W., Principal meridian, Madison County, Montana. All 30 claims were located for iron ore and other valuable minerals.

time, to provide a complete analysis of the costs and feasibility of all elements necessary to develop a successful mine."

On October 5, 1967, appellant filed mineral patent applications, M 5452 and M 5453, for 30 lode claims in the Beaverhead National Forest in Madison County, Montana. The BLM Land Office Manager, Billings, Montana, signed "Mineral Entry Final Certificates" for the claims on July 24, 1968. 2/ By letter dated April 1, 1969, the Forest Service informed BLM that it had no objection to the clearlisting of all the claims for patent. The Forest Service based its recommendation on a mineral report dated March 7, 1969. The Forest Service prepared a supplemental mineral report dated January 21, 1971, which also recommended clearlisting all the claims.

Various correspondence and documents in the case files for the years 1971-73 indicate that Departmental concern was directed to whether or not an environmental impact statement would be required by the National Environmental Policy Act of 1969 before a patent could issue. While it was determined by the Department that such a statement was not necessary prior to issuance of a patent, 3/ BLM was directed to ascertain the effect of Federal and state environmental restrictions on the determination of whether or not a valuable discovery had been made. 4/ In response to this direction the Forest Service prepared a supplemental mineral report, dated March 1, 1974, approved by the Forest Supervisor on March 6, 1974, addressing the environmental concerns and again recommending the clearlisting of all the claims. By letter dated June 17, 1974, from the Acting Chief, Division of Upland Minerals, appellant was informed that its "patent applications were in the final mechanics of issuances," and that patents could be expected to be issued "very shortly."

Despite this information, following an August 1974 meeting of employees for appellant and Forest Service and BLM personnel, BLM requested that appellant submit further data to support the existence

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2/ The certificates stated that "[p]atent may issue if all is found regular and upon demonstration and verification of a valid discovery of a valuable mineral deposit * * *."

3/ This determination was initially a matter of opinion within the Department. Subsequent court and Board decisions have reached the same conclusion. State of South Dakota v. Andrus, 614 F.2d 1190 (8th Cir. 1980); United States v. Pittsburgh Pacific, 30 IBLA 388, 84 I.D. 282 (1977); United States v. Kosanke Sand Corp. (On Reconsideration), 12 IBLA 282, 80 I.D. 538 (1973).

4/ See copy of memorandum dated October 5, 1973, from the Assistant Solicitor-Minerals to the Chief, Division of Upland Minerals, BLM, and letter from Deputy Assistant Secretary to United States Steel, received on or about December 26, 1973 (Exhibit II to appellant's statement of reasons).

of a discovery on each claim. 5/ On March 8, 1977, BLM received a letter from the Regional Forester, Missoula, Montana, indicating that a Forest Service mining engineer had completed a supplemental mineral report based on the test data and supplementary information submitted by appellant. The report recommended clearlisting 23 of the 30 claims. 6/ The Regional Forester stated that "[w]e believe the recommendations are fully supported." He also stated that the Forest Service had no objection to BLM granting appellant a 2-year extension of time to allow appellant to complete the additional work scheduled for the remaining seven claims. 7/ On April 27, 1977, BLM granted appellant until April 1979 to provide the information for the seven claims.

A BLM mineral specialist prepared an analysis, dated June 10, 1977, of all the mining reports prepared by the Forest Service. He recommended approving the 23 claims listed by the Forest Service. His analysis was approved by another BLM mineral specialist on June 15, 1977. On the same date this BLM mineral specialist also approved the March 1977 Forest Service report. On July 6, 1977, the Chief, Branch of Lands and Minerals Operations, Montana State Office, signed the Mineral Entry Final Certificates, approving the 23 claims for patent.

Patent did not issue. On January 6, 1978, the Montana State Director sent a letter to appellant requesting the following information: 8/

5/ The Acting Montana State Director requested this information in a letter to appellant dated September 9, 1974. The letter stated:

"I would like to call your attention to our lengthy discussion on the subject of marketability coupled with the known reserves of the company. This is an important factor that we must consider in our validity determinations.

"We are returning these case files (M-5452 and M-5453) to the Forest Service where they will be retained for evaluation of additional data submitted as a result of this letter."

6/ The claims recommended for clearlisting were: Quake Nos. 1, 2, 3, and 7 through 18; Sea Nos. 13 and 14; Gee Nos. 13 and 14; and Low Nos. 3, 4, 10, and 11.

7/ The letter concluded:

"You may also wish to refer to Mr. Stentz's report of March 1, 1974, which discusses environmental aspects. On page 9 of that report, Item 5, he estimates that 30-35 percent of the mining cost may be related to environmental aspects. Using 35 percent, it would only change the differential by about one cent."

8/ There was disagreement within the State Office on the necessity for this information. A November 21, 1977, memorandum from the Leader, Mining Staff, through the Chief, Branch of Lands and Minerals Operations, to the Chief, Division of Technical Services, stated:

"As you are aware this letter [a draft of the January 6 letter] and the recent memo to the Director [BLM], November 14, 1977, in my

1. Development schedule.

2. Where the crusher, concentrator, agglomerator, and tailings will be situated, and what steps have been taken to secure the lands involved.

3. How the ore will flow from the mine through the mill and to the smelter, showing routes, transportation system, and efforts to obtain rights-of-way.

4. Cost figures, which we may verify, supporting the overall profitability of the project.

5. If there is an adequate source of water, and what steps have been taken to secure water rights.

6. What environmental protection installations are necessary and where would they be located.

7. Availability of a labor source and plans to provide attendant community facilities.

8. Availability of an adequate power supply and the steps which have been taken to secure it.

The letter did not specify a deadline for submission. On June 5, 1978, BLM notified appellant that if the information as set forth in the January 6, 1978, letter was not submitted within 30 days of receipt of the June 5 letter, the applications would be rejected. Following an extension of time, appellant made a timely submission. On March 2, 1979, BLM rejected the patent applications. 9/ BLM stated in the decision that the "additional data was requested in order to evaluate the mineral deposit to insure that there was a reasonable prospect that a successful mine will be developed." 10/ Since BLM considered the

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fn. 8 (continued)
opinion go far beyond the traditional, court tested concept of validity. The information which has been submitted by the company and gathered by the Mining Staff clearly indicates a reasonable prospect of developing a paying mine. Therefore, my recommendation that the 23 claims before us at this time be clearlisted for patent still stands."

9/ By letter of the same date, received by BLM on March 7, 1979, appellant informed BLM that it had supplied the Forest Service with the additional data in support of seven claims in the patent applications.

10/ In a memorandum dated November 14, 1977, the Montana State Director informed the Director, BLM, that the State Office intended to scrutinize mineral patent applications very closely and that it would require the applicant to support the application with a complete showing that "he

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information submitted to be incomplete, in essence it rejected the applications because it found that appellant had failed to provide sufficient evidence of the discovery of a valuable mineral deposit.

[1] The analysis of the Board in another mineral patent application case, Brittain Contractors, Inc., 37 IBLA 233 (1978), is directly applicable in this case. Therein we stated:

> First, we must observe that if the BLM adjudicator is not satisfied with the evidence of discovery submitted with the patent application he has a right to so advise the a applicant and request further evidence. He certainly is precluded from granting the application. Moreover, it would seem to be incumbent on the applicant to cooperate in providing such evidence in support of its own application so as to resolve any deficiencies and to facilitate the process.
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> However, appellant is correct in arguing that it is premature to reject the patent application on the adjudicator's finding of insufficient evidence of discovery. Before there can be any final disposition of a mineral patent application which is otherwise acceptable, there must be a mineral examination of the subject claims for the purpose, inter alia, of obtaining evidence tending either to confirm or refute the allegation that qualifying discoveries have been made. If the discoveries are confirmed by the BLM's minerals personnel, and if all else be regular, the application may be processed and a patent issued without quasi-judicial proceedings. If, however the evidence yielded by the mineral examination impels a finding of "no discovery," or other impediment to issuance of patent, and

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fn. 10 (continued)
is able and will develop a mine." The Director, BLM, responded by memorandum dated December 19, 1977, stating:

"Your proposal to require the applicant to submit proof that he will develop a mine is not consistent with case law. Under the prudent man doctrine (Castle v. Womble 19 L.D. 455, 1894), the patent applicant is only required to show "--a reasonable prospect of success in developing a valuable mine." In United States v. Harenburg, 9 IBLA 77 (1973) the Department held: '. . . A favorable showing of bona fides in development is recognized as one of the factors which can serve to demonstrate the marketability of a mineral from a particular deposit, but development or nondevelopment is merely evidentiary, the test being whether the present capability of profitably extracting the mineral exists . . . .' In conclusion, we support your efforts in obtaining the technical data, mining plans and associated information needed to do a thorough economic analysis of U.S. Steel's proposed venture. However, the requirement of proof that they 'will develop a mine' is not enforceable."

> the applicant does not voluntarily withdraw his application, BLM is left with no choice but to initiate contest proceedings to determine the validity of the claims. United States v. O'Leary, 63 I.D. 341 (1956). Prior to a final holding that the claims are null and void, BLM may not summarily reject the application on any finding of disputed fact. This is because the validity or invalidity of the claims is the ultimate issue in the contest proceeding, as well as the basis for rejection of the application. But if a charge of "no discovery" is finally proven in a proper proceeding, then not only must the patent application be rejected, the claims must be held to be null and void. United States v. Carlile, 67 I.D. 417 (1960). See United States v. Heden, 19 IBLA 326, 343-344 (dissenting opinion) (1975); United States v. Taylor, 19 IBLA 9, 25-27 (1975), 82 I.D. 68, 74. 2/ [Emphasis added.]
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> 2/ There may be situations in which the failure of mineral patent applicant to comply with a clear requirement of the regulations relating to the form of the application would result in the simple rejection of the application by the adjudicator. Such a situation might occur in an application for a patent of a lode mining claim, where the application was not accompanied by a mineral survey as required by 43 CFR 3861.1-1. The failure of an applicant to tender such a survey would necessitate the rejection of his patent application, but it would not necessarily imply that the mining claim was null and void. It is basically a distinction between the form of the patent application and its substance. The issue involved herein, i.e., the existence of a discovery at a specified date, is manifestly one of substance going to the validity of the claims or parts thereof, and is thus resolvable against the claimant only after affording the applicant notice and an opportunity for hearing on disputed issues of fact. [Emphasis added.]

The Brittain case makes it clear that a mineral patent application may not be summarily rejected on the basis of the lack of discovery of a valuable mineral deposit without affording the applicant notice and an opportunity for hearing on the disputed issues of fact. See Big Horn Calcium Co., 44 IBLA 289 (1979). 11/

11/ In justifying the request for additional information BLM appears to have relied to a great extent on the Board decision in United States v. Pittsburgh Pacific Company, 30 IBLA 388, 84 I.D. 282 (1977). It should be pointed out that Pittsburgh Pacific involved a contest proceeding against a mineral patent applicant and that the additional information was requested in the context of such a proceeding.

In this case BLM was not satisfied with the evidence of discovery submitted by appellant, and on a number of occasions it requested that additional data be supplied. However, in every instance in this case record Forest Service and BLM minerals personnel found the existence of a discovery of a valuable mineral deposit. In 1969 and 1971 the Forest Service recommended clearlisting all 30 claims. In 1974 the Forest Service again recommended clearlisting all the claims. Following submission of further drilling data, the Forest Service recommended patent for 23 of the 30 claims and indicated no objection to an extension of time for appellant to complete tests and present data on the remaining seven claims. BLM minerals personnel concurred in the Forest Service recommendation for 23 claims and BLM granted appellant an extension to file additional information on the seven claims. Appellant filed this information with the Forest Service on or about the time BLM rejected the applications.

If BLM considered that the record provided insufficient evidence of discovery, it should have initiated a contest proceeding. Rejection of the patent applications was improper.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM. Within 90 days of receipt of this decision BLM shall issue patent, if all else be regular, for the 23 claims, or initiate a contest proceeding. For the remaining 7 claims, minerals personnel should conduct a mineral examination and, if discoveries are confirmed and all else be regular, patent should issue. If discoveries are not confirmed, and appellant does not withdraw the application as to these claims, a contest proceeding should be initiated.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge